



GSA Federal Acquisition Service

November 7, 2011

**FAS INSTRUCTIONAL LETTER 2012-03****MEMORANDUM FOR ALL FAS and VA ACQUISITION ACTIVITIES****FROM:**

HOUSTON W. TAYLOR  
ASSISTANT COMMISSIONER  
OFFICE OF ACQUISITION MANAGEMENT (QV)

A blue ink signature of Houston W. Taylor is written over the typed name and title.**SUBJECT:**

GUIDANCE ON PROHIBITION ON  
CONTRACTING WITH INVERTED DOMESTIC  
CORPORATIONS OR ANY SUBSIDIARY OF ONE

1. Purpose: This Instructional Letter (IL) provides guidance on the implementation of the changes to the Federal Acquisition Regulation (FAR) Subpart 9.1, Prohibitions on Contracting with Inverted Domestic Corporations, (IDC) or any subsidiary of one.
2. Background: On May 31, 2011, the Federal Acquisition Regulation (FAR) was amended to prohibit the award of contracts using appropriated funds; to any foreign incorporated entity that is treated as an inverted domestic corporation or to any subsidiary of one, (see [FAC 2005-52, Prohibition on Contracting With Inverted Domestic Corporations, 76 FR 31410](#)). The amendment implements a series of legislative actions. Specifically, in 2002 Congress enacted a restriction on doing business with inverted domestic corporations through the Homeland Security Act. This rule only applied to the Department of Homeland Security (DHS). In FY 2006 and 2007 Congress broadened the restriction to include the Departments of Transportation, Treasury and Housing and Urban Development. In the appropriations act language in FY 2008, Congress applied the restriction Government-wide. In FY 2009 the restriction was again in the Omnibus Appropriations Act, (Public Law 111-8).

An Inverted Domestic Corporation is a corporation that used to be incorporated in the United States, or used to be a partnership in the United States, but now is incorporated in a foreign country, or is a subsidiary whose parent corporation is incorporated in a foreign country, that meets the criteria specified in 6 U.S.C. 395(b), applied in accordance with the rules and definition of 6 U.S.C. 395(c). A subsidiary is an entity in which 50% or more of the entity/corporation is owned directly by a parent corporation; or through another subsidiary of a parent corporation.

3. Effective Date: Date of signature.
4. Termination Date: This IL remains in effect until it is cancelled or incorporated into a

handbook.

5. Applicability. This IL applies to all Federal Acquisition Service (FAS) contracting activities and the Department of Veterans Affairs (VA) contracting activities awarding Federal Supply Schedule (FSS) contracts.
6. Reference Regulations. Public Law 111-8; Public Law 111-117; FAR Part 9-Contractor Qualifications; FAR Part 52 – Solicitation Provisions and Contract Clauses. For full details of all applicable regulations: Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993; Executive Order 13563, Improving Regulations and Regulatory Review, dated January 18, 2011; 40 U.S.C., 121(c); 10 U.S.C. chapter 137; 42 U.S.C. 2473(c); FAR Part 4, Administrative Matters and FAR Part 9, Contractor Qualifications.
7. Instructions/Procedures.

A. Federal Supply Schedules

- i. **Solicitation Refresh:** Applicable FSS solicitations, (reference exhibits 1 & 2, pg 4), shall include the provisions at FAR 52.209-2 and FAR 52.209-10 requiring offerors to represent that they are not an Inverted Domestic Corporation or a subsidiary of one at the time of initial offer, contract award or any time after. During the solicitation stage, contractors are not eligible to submit offers if they are an IDC or a subsidiary of one.
- ii. **Award:** For prohibited awards, contractors are not eligible to receive a contract award if they are an IDC or a subsidiary of one. Contracting Officers may rely on the offerors representation that they are not an IDC unless the contracting officer has reason to question the representation.
- iii. **Post-award:** Applicable Schedule contracts shall be modified to include the clause at FAR 52.209-10 via mass modification. Should the contractor's status change after contract award the contractor may become ineligible for continued performance. Payments to a contractor that is an IDC may constitute a violation of the Anti Deficiency Act, reference FAR 52.209-10, unless a waiver is received.
- iv. **Waiver:** An agency head may waive this prohibition if the agency head determines that the waiver is in the best interest of national security, documents the determination and reports it to the Congress, FAR 9.108-4.

B. FAS contract vehicles, (i.e. Government-Wide Acquisition Contracts (GWACs), Multi-Agency Contracts (MACs), Indefinite Delivery/Indefinite Quantity (IDIQs)) and all other contract awards made by a FAS acquisition activity:

- i. **Pre-Award:** Applicable FAS solicitations (reference exempted/prohibited award chart, pg 4), shall include the provisions at FAR 52.209-2 and FAR 52.209-10, requiring Offerors to represent that they are not an Inverted Domestic Corporation or subsidiary of one at the time of initial offer, contract award or any time after. During the solicitation stage, contractors are not eligible to submit offers if they are an IDC or a subsidiary of one.

- ii. **Award:** For prohibited awards, (as defined in exhibits 1 & 2, pg 4), contractors are not eligible to receive a contract award if they are an IDC or a subsidiary of one. Contracting Officers may rely on the offerors representation that they are not an IDC unless the contracting officer has reason to question the representation.
- iii. **Post-award:** Applicable contracts shall be modified to include the clause at FAR 52.209-10. Should the contractor's status change after contract award the contractor may become ineligible for continued performance. Payments to a contractor that is an IDC may constitute a violation of the Anti Deficiency Act, reference FAR 52.209-10, unless a waiver is received.
- iv. **Waiver:** An agency head may waive this prohibition if the agency head determines that the waiver is in the best interest of national security, documents the determination and reports it to the Congress, FAR 9.108-4.

## 8. Questions & Answers.

### Q1. What contract awards with associated FY funding are allowed?

A1. Contracting Officers may use fiscal year funding listed in the table below to award a contract of the following type to an IDC or a subsidiary of one. All FAS contract awards and contract vehicles; e.g. Schedules, Government-wide Acquisition Contracts (GWACs), Multi-Agency Contracts (MACs), and IDIQ contracts as well as task orders and delivery orders against the above listed contract vehicles. Note the fiscal year funding associated with the allowed awards:

Exhibit 1.

If the contract was...	It and any task order against it may be funded with....
Awarded before December 26, 2007	FY 2008 funds
Awarded before March 11, 2009	FY 2009 funds
Awarded before December 16, 2009	FY 2010 funds

### Q2. What contract awards does the prohibition apply to?

A2. Contracting Officers may not use fiscal year funding listed in the table below to award a contract of the following type to an IDC or a subsidiary of one. All FAS contract awards and contract vehicles; e.g. Schedules, Government-wide Acquisition Contracts (GWACs), and Multi-Agency Contracts (MACs), and task order and delivery orders against the above listed contract vehicles.

Exhibit 2.

If the contract was...	It and any task order against it may NOT be funded with ....
Awarded on or after December 26, 2007	FY 2008 funds
Awarded or after March 11, 2009	FY 2009 funds
Awarded on or after December 16, 2009	FY 2010 funds

**Q3. Does this prohibition flow down to subcontractors?**

A3. This prohibition is not applicable to subcontractors.

**Q4. What mechanism does the Contracting Officer have to verify that a prospective or performing contractor is/is not an Inverted Domestic Corporation?**

A4. Consult with your legal counsel for guidance on your specific scenario.

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